Since there is no teaching or suggestion in the art that would have led an artisan to employ the 2D motion encoders of the Jepson preamble to read a watermark, a prima facie case of obviousness of claim 3, and claims 6-9 dependent thereon, has not been established, so allowance of such claims is solicited.

(Since the Office has failed to meet its burden concerning showing obviousness of claim 3, applicants do not further address claims 6, 7 or 9.)

Claims 10 and 16

Claims 10 and 16 stand rejected over their respective Jepson preambles, in view of Rhoads (6,345,104).

Rhoads teaches a digital watermark.

As with claim 3, there is nothing in Rhoads that teaches or suggests the proposed alteration of the admitted prior art scanner to incorporate the claimed functionality. Rather, hindsight seems to have been impermissibly employed.

(If cancellation of claim 10 would result in allowance of the other claims, the undersigned would agree to cancel same by an Examiner's amendment. The cancelled claim may then be pursued in a related application. If allowability of the other pending claims is not indicated, then the undersigned would prefer to appeal claim 10 in the present application along with other rejected claims.)

Claims 13-15

Claims 13-15 stand rejected over the Jepson preamble, in view of Wang and Rhoads.

Again, applicant respectfully submits that hindsight has been impermissibly been employed to yield the claimed combinations.

Moreover, while the rejection (para. 4) does not mention Cherry, the discussion that follows makes reference to that patent. Clarification is solicited.

Likewise, the discussion of claim 15 refers to color images. But claim 15 concerns examining a frequency content of the scan data. At least in this context, frequency and color content are not interchangeable.

Claims 19-24

Claims 19-24 stand rejected over the respective Jepson preambles, in view of Cherry and Rhoads.

Cherry teaches, at Fig. 4A, a pattern by which a laser may scan an item so as to sense barcode data. As noted by the Examiner, about 8% of the total area is scanned.

The Examiner is reminded that a barcode occupies *two* dimensions of space, but can be fully read *from a single line scan* that passes along any line from one side to the other. Thus, barcode scanning does not present the same conundrum addressed by applicant of locating portions that appear most promising for decoding encoded data.

Put another way, Cherry's scan pattern in Fig. 4A does not attempt to identify portions that are most promising for conveying encoded data. Rather, Cherry's Fig. 4A pattern employs a brute force approach – scanning all regions. The 8% figure reflects that fact that a brute force search for a bar code can scan less than 100%, since any single line across the 2D barcode will suffice to read the data.

In view of the foregoing, applicant submits that Cherry fails to teach the limitations of applicant's claims for which it has been cited.

The limitations of applicant's claim 20 do not seem to be particularly considered in the Action.

The limitations of claims 22 and 24 are dismissed by reference to claims 19 and 20. However, claims 22 and 24 concern different limitations than claims 19 and 20

Again, applicant respectfully submits that hindsight has been impermissibly been employed to yield the claimed combinations.

Favorable reconsideration and passage to issuance are solicited.

Respectfully submitted,

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23735

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